

Message Text

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ORIGIN EB-08

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DODE-00 DOTE-00 INR-07 NSAE-00 FAA-00 L-03 INRE-00
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DRAFTED BY EB/OA:MHSTYLES:VLV

APPROVED BY EB:JLKATZ

EB/TCA - JWB;LLER

EA/J - S.ECTON

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O 200022Z JAN 78
FM SECSTATE WASHDC
TO AMEMBASSY TOKYO IMMEDIATE

C O N F I D E N T I A L STATE 015681

E.O. 11652: GDS

TAGS: EAIR, JA

SUBJECT: CIVAIR - FLYING TIGER APPLICATION

REF: TOKYO 936

1. DEPT WISHES COMMENT ON EMBASSY ASSESSMENT AND RECOMMENDATION THAT CAB NOT INITIATE ANY ACTION AGAINST JAL BECAUSE WE SEE SITUATION SOMEWHAT DIFFERENTLY.

2. WE DO NOT BELIEVE, IN THE FIRST PLACE, THAT LEGAL ARGUMENTS CONTAINED IN JAPANESE NOTE ARE VALID. WE ARE PREPARING A RESPONSE NOTE WHICH WILL BE SENT TO EMBASSY SHORTLY FOR DELIVERY TO JAPANESE.

3. HOWEVER, WHILE WE BELIEVE OUR LEGAL POSITION IS SOUND, WE DO NOT VIEW PROBLEM SIMPLY AS ONE OF DENIAL OF BENEFITS
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TO A PARTICULAR AIRLINE. SO LONG AS JAPANESE HOLD TO THEIR VIEW, THEY ARE IN POSITION TO REFUSE TO APPROVE ALMOST ANY AIRLINE SCHEDULE. THERE WILL BE CONTINUING ADJUSTMENTS IN US AIRLINE SCHEDULES WHICH JAPANESE COULD HARASS. MORE IMPORTANT, JAPANESE VIEW THAT CAPACITY FREEZE REMAINS IN EFFECT AMOUNTS TO DE FACTO ABROGATION OF 1959 AGREED MINUTE, WHICH IS ONLY PROTECTION US HAS TO PREVENT JAPAN

FROM ACTING UNILATERALLY TO DISAPPROVE CAPACITY INCREASES.

THUS ANY FORMAL JAPANESE DENUNCIATION OF 1959 AGREED MINUTE WOULD NOT CHANGE DE FACTO SITUATION. WE WOULD CHALLENGE, IN ANY EVENT, JAPANESE RIGHT TO DENOUNCE AGREED MINUTE SEPARATELY FROM AIR TRANSPORT AGREEMENT.

4. FROM A STRICTLY AVIATION VIEWPOINT, WE DOUBT THAT FORMAL JAPANESE DENUNCIATION OF AIR TRANSPORT AGREEMENT AND/OR AGREED MINUTE WOULD CHANGE BARGAINING SITUATION MATERIALLY. WE RECOGNIZE THAT JAPANESE DENUNCIATION PROBABLY COULD OCCUR ONLY IF HAWKS GAIN UPPER HAND, WHICH MEANS THAT MOFA WOULD LOSE INFLUENCE. WHILE THIS WOULD BE AN UNDESIRABLE BY-PRODUCT, EVIDENCE IN FTL CASE DOES NOT DEMONSTRATE THAT MOFA HAS MUCH INFLUENCE; IN FACT IT APPEARS THAT MOFA'S VIEWS DO NOT DIFFER ALL THAT MUCH FROM MOT.

5. CAB ACTION MAY BE TAKEN IN RESPONSE TO A PETITION FILED BY FTL ON JANUARY 9. WE ARE NOT INCLINED TO INTERFERE WITH THIS PROCESS BECAUSE WE HAVE ALREADY TOLD JAPANESE THAT COMPENSATING ACTION WOULD BE (NOT MIGHT BE) TAKEN AND BECAUSE NATURE OF CAB ACTION DOES NOT INVOLVE IMMEDIATE RETALIATION. UNDER PERTINENT CAB REGULATION, FIRST STEP WOULD BE ISSUANCE ORDER BY CAB REQUIRING JAL FILE ITS EXISTING SCHEDULES WITHIN SEVEN DAYS AND ANY

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PROPOSED SCHEDULES 30 DAYS IN ADVANCE, BASED ON FINDING THAT GOJ HAD, OVER OBJECTIONS OF USG, DENIED A US AIRLINE RIGHTS PROVIDED FOR IN BILATERAL. CAB MAY THEN PROPOSE TO PRESIDENT ISSUANCE OF AN ORDER DISAPPROVING CERTAIN EXISTING JAL FLIGHTS INSOFAR AS THEY CARRY SINGAPORE-US CARGO EFFECTIVE 30 DAYS AFTER ISSUANCE OF ORDER. PRESIDENT HAS TEN DAYS IN WHICH HE MAY STAY OR DISAPPROVE ORDER. IF HE TAKES NO ACTION, ORDER IS RELEASED BY CAB AFTER 10-DAY PERIOD. ENTIRE PROCESS FROM FIRST ORDER TO EFFECTIVE DATE OF SUSPENSION JAL RIGHTS THUS TAKES MINIMUM OF 47 DAYS AND IN PRACTICE WILL TAKE LONGER. PROCESS CAN BE STOPPED OR REVERSED AT ANY TIME.

6. CLEARLY WE WANT TO RESOLVE ISSUE PROMPTLY AND NOT LEAVE ISSUE FOR STYLES VISIT. ALTHOUGH IN END PROBLEM MAY NOT BE RESOLVED EXCEPT THROUGH CONSULTATIONS, WE WOULD NOT WANT TO SIGNAL NOW THAT ISSUE CAN BE ADDRESSED WHEN AIRPORT TALKS TAKE PLACE BECAUSE THIS WOULD GUARANTEE JAPANESE WOULD TAKE NO FURTHER ACTION UNTIL THAT TIME.

7. DEPT WOULD APPRECIATE EMBASSY'S REASSESSMENT OF SITUATION IN LIGHT FOREGOING. CHRISTOPHER

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